

UNOFFICIAL COPY

OC HI 220109660 LK 2082

Doc#: 2211804094 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 04/28/2022 07:11 AM Pg: 1 of 9

THIS DOCUMENT PREPARED
BY AND AFTER RECORDING
RETURN TO:

Holland & Knight, LLP
150 N. Riverside Plaza
Suite 2700
Chicago, Illinois 60606
Attention: Frank L. Keldermans

Permanent Tax Index Number(s):

17-17-229-013-0000
17-17-229-014-0000
17-17-229-015-0000
17-17-229-016-0000
17-17-229-050-0000

This space reserved for Recorder's use only.

Property Address(es):

1125 W. Van Buren St.
Chicago, Illinois 60607

ABSOLUTE ASSIGNMENT OF LEASES AND RENTS

THIS ABSOLUTE ASSIGNMENT OF LEASES AND RENTS (this "**Assignment**") is entered into as of April 20, 2022 by 1125 VB PROPCO, LLC, an Illinois limited liability company (hereinafter called "**Maker**"), for the benefit of AMERICAN NATIONAL INSURANCE COMPANY, a Texas insurance corporation (hereinafter called "**Noteholder**").

FOR AND IN CONSIDERATION of the loan made to Maker by Noteholder as evidenced by that certain promissory note (hereinafter referred to as the "**Note**") of even date in the original principal sum of \$55,000,000.00, payable to the order of Noteholder and executed by Maker, which is described in and secured by a Mortgage, Security Agreement and Financing Statement (And Fixture Filing) (hereinafter called "**Mortgage**") of even date therewith executed by Maker to Noteholder, covering the property described in **Exhibit "A"** attached hereto and made a part hereof, which, together with all buildings, improvements, fixtures and equipment located thereon owned by Maker, is hereinafter referred to as the "**Mortgaged Property**", Maker has GRANTED, TRANSFERRED and ASSIGNED, and by these presents does GRANT, TRANSFER and ASSIGN unto Noteholder all of Maker's right, title and interest in and to the following:

UNOFFICIAL COPY

1. any and all leases, written or oral, and all agreements for use or occupancy of any portion of the Mortgaged Property, any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, including, without limitation, subleases thereunder, upon or covering the use or occupancy of all or any part of the Mortgaged Property, all such leases, agreements, subleases and tenancies heretofore mentioned, being hereinafter individually and collectively referred to as the "Lease" and such parties, lessees, sublessees and tenants under any Lease being hereinafter individually and collectively referred to as a "Lessee";

2. any and all guaranties of the performance, payment and/or collection of any of the Leases (individually referred to as a "Guaranty" and collectively referred to as "Guaranties") by any guarantor, surety or other liable party thereunder (collectively referred to as a "Guarantor"); and

3. the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due, or to which Maker may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or Guaranties or from or out of the Mortgaged Property, or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, taxes and insurance premium contributions, and liquidated damages following default, the premium payable by Lessee under the Lease upon the exercise of any cancellation privilege provided for in the Lease, payments from Guarantor and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Mortgaged Property, together with any and all rights and claims of any kind which Maker may have against Lessee or Guarantor in connection with the Lease or against any subtenants, occupants or users of the Mortgaged Property, all such monies, rights and claims in this paragraph described being hereinafter referred to as the "Rents".

To induce Noteholder to lend the funds evidenced by the Note, Maker hereby makes the following REPRESENTATIONS AND WARRANTIES as of the date hereof:

That Maker has good title to the Leases, Guaranties and Rents hereby assigned and good right to assign the same, and that no other person, corporation or entity (other than any lessee thereof) has any right, title or interest therein; that, to Maker's actual knowledge, Maker has duly and punctually performed all and singular the material terms, covenants, conditions and warranties of the existing Leases on Maker's part to be kept, observed and performed; that Maker has not previously sold, assigned, transferred, mortgaged or pledged the Leases, Guaranties or the Rents, whether now due or hereafter to become due, other than in connection with prior loans secured by the Mortgaged Property and repaid in full on or prior to the date hereof; that any of the Rents due for any period subsequent to the date hereof have not been collected in excess of one (1) month in advance (except for security deposits and first month's rent due upon execution of the applicable Lease) and that payment of any of the Rents has not otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or compromised; that Maker has not received any funds or deposits from any

UNOFFICIAL COPY

Lessee in excess of one (1) month's rent for which credit has not already been made on account of accrued rents, except for usual and customary security deposits and first month's rent due upon execution of the applicable Lease; and that, except as disclosed in the Closing Certificate of even date herewith executed by Maker to Noteholder, to Maker's actual knowledge, the lessee under any existing Lease is not in material default of any of the terms thereof.

Maker further COVENANTS AND AGREES:

1. to observe, perform and discharge, in all material respects, all obligations, covenants and warranties provided for under the terms of the Leases and Guaranties to be kept, observed and performed by Maker in a commercially reasonable manner and use commercially reasonable efforts to enforce guaranties of leases of the Mortgaged Property so as to keep all such leases and lease guaranties at all times in full force and effect (unless terminated pursuant to the exercise of Maker's remedies under such leases and lease guaranties or at law or in equity), and to give prompt notice to Noteholder in the event Maker fails to observe, perform and discharge same;
2. immediately upon request of Noteholder, during an uncured Event of Default (defined below) or after any maturity including acceleration of the maturity of the Note to notify in writing each Lessee, Guarantor and occupant of the Mortgaged Property or any part thereof that any security deposits or other deposits heretofore delivered to Maker have been retained by Maker or assigned and delivered to Noteholder as the case may be;
3. to enforce or secure in a commercially reasonable and prudent manner and to the extent in good faith and the ordinary course of Maker's business, and in the name of Noteholder if Noteholder should so request, the performance of each and every material obligation, term, covenant, condition and agreement to be performed by (a) any Lessee under the terms of the Leases and (b) any Guarantor under the terms of the Guaranties;
4. to appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases, the Guaranties or the obligations, duties or liabilities of Maker and any Lessee thereunder, and, upon request by Noteholder, to do so in the name and on behalf of Noteholder but at the expense of Maker, and to pay all reasonable out-of-pocket costs and expenses of Noteholder, including reasonable attorneys' fees, in any action or proceeding in which Noteholder may appear;
5. not to receive or collect any Rents from any present or future Lessee of the Mortgaged Property or any part thereof or from any Guarantor for a period of more than one (1) month in advance (except for security deposits and first month's rent payable upon execution of the applicable Lease), or pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents other than pursuant to the Loan Documents;
6. except in a commercially reasonable and prudent manner and to the extent in good faith and the ordinary course of Maker's business, not to waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any Guarantor or Lessee of the Mortgaged

UNOFFICIAL COPY

Property of and from any obligations, covenants, conditions and agreements by said Lessee or Guarantor to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time specified in any Lease;

7. except as expressly permitted in the Mortgage, not to cancel, terminate or consent to any surrender of any Lease or any Guaranty, or modify or in any way alter the terms of any Lease or any Guaranty without, in each such instance, the prior written consent of Noteholder;

8. immediately upon receipt of demand from Noteholder during an uncured Event of Default or after any acceleration of the maturity of the Note to notify each Lessee, Guarantor and occupant of the Mortgaged Property in writing of the rights granted to Noteholder hereunder, and/or, to direct, in writing, each Lessee, Guarantor and occupant of the Mortgaged Property to pay all Rents then due or to become due from such Lessee, Guarantor and occupant directly to Noteholder upon such Lessee's, Guarantor's or occupant's receipt of written notice from Noteholder of Noteholder's exercise of Noteholder's rights under this Assignment;

9. to provide Noteholder with copies of all written notices, complaints, demands and petitions regarding (a) any actual, potential or alleged default on the part of the landlord or the tenant under Leases representing, in aggregate, greater than five percent (5%) of the rentable area of the Mortgaged Property or (b) Hazardous Materials, as such term is defined in the Mortgage, sent or received by Maker promptly upon Maker's sending same or within five (5) business days of Maker's receipt of same, as applicable; and

10. to promptly remit to Noteholder any and all Rents received by Maker after Noteholder's written Notice (as defined in the Mortgage) to Maker of notice of termination of Maker's license to collect Rents granted herein (a "Termination Notice") unless that the license is reinstated in writing by Noteholder.

So long as there shall exist no Event of Default by Maker in the payment of any indebtedness and obligations secured hereby or in the observance and performance of any other obligation, covenant or warranty set forth herein or in the Note, the Mortgage or any other document executed by Maker evidencing, securing or relating to the Note (such documents, including the Note and Mortgage, being herein referred to collectively as the "Loan Documents"), Maker shall have the right under a license granted hereby (but limited as provided in the following paragraph) to (a) collect, receive and retain (provided that Maker shall hold all Rents until the accrual thereof) all of the Rents arising from or out of the Leases, (b) take all actions and enjoy all rights of landlord under the Leases and beneficiary under the Guaranties, and (c) enforce the Leases and the Guaranties.

Upon or at any time after default in the payment of any indebtedness secured hereby or in the observance or performance of any obligation, covenant or warranty set forth herein or in the other Loan Documents, in all of the foregoing cases, which remains uncured beyond any applicable cure period, if any, expressly provided in the Mortgage or any other Loan Document or expressly agreed in writing in Noteholder's sole and absolute discretion or after any acceleration of the maturity of the

UNOFFICIAL COPY

Note (individually and collectively, an "Event of Default"), Noteholder, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies: (a) to terminate the license hereby granted to Maker to collect the Rents as aforesaid by a Termination Notice and, without taking possession of the Mortgaged Property, to, in Noteholder's own name, demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and, after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof, together with any funds of Maker deposited with Noteholder, upon any indebtedness secured hereby or obligation provided for in any of the Loan Documents and in such order as Noteholder may determine; (b) to declare all sums secured hereby immediately due and payable and, at Noteholder's option, to exercise all of the rights and remedies provided for under the terms hereof or in the other Loan Documents; and (c) without any action or proceeding, through any person or by agent, or by the trustee(s) or successor trustee under the Mortgage, or by a receiver to be appointed by a court, to enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof, and irrespective of Maker's possession of the Mortgaged Property, to make, modify, enforce, cancel or accept surrender of any of the Leases and Guaranties, to remove and evict any Lessee or other occupant, to increase or reduce rents, to decorate, clean and make repairs, and to otherwise do any act or incur any cost or expenses Noteholder shall deem proper to protect the Leases, Guaranties and the Mortgaged Property, as fully and to the same extent as Maker could do if in possession, and in such event to apply any funds so collected to the operation and management of the Mortgaged Property, but in such order as Noteholder shall deem proper, and including payment of reasonable management, brokerage and attorney's fees, and then, to the extent funds are available and to the extent deemed appropriate by Noteholder, to the maintenance, without interest thereon, of a reserve for replacement of items on the Mortgaged Property, and then, if any of such funds remain, to the payment of any indebtedness evidencing, securing or relating to the terms of the Loan Documents whether or not then due.

The exercise by Noteholder of any of the rights and remedies described above, including collection of the Rents and application thereof as aforesaid and/or the entry upon and taking possession of the Mortgaged Property, shall not cure or waive any Event of Default or waive, modify or affect any notice of default hereunder or under the other Loan Documents, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Noteholder, once exercised, shall continue for so long as Noteholder shall elect, notwithstanding that the collection and application as aforesaid of the Rents may have cured the original Event of Default. If Noteholder shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent Event of Default.

Notwithstanding the aforesaid license of Maker to collect the Rents accruing under the Leases prior to an Event of Default, Noteholder shall at all times be the creditor of each Lessee under the Leases in respect of assignments for the benefit of creditors, bankruptcy, reorganization, rearrangement, insolvency, dissolution, or receivership proceedings, with Noteholder having the option to apply any monies received by Noteholder as such creditor to reduction of the principal or

UNOFFICIAL COPY

interest or other indebtedness evidencing, securing or relating to the Loan Documents to the extent permitted by applicable law and without payment by Maker of any prepayment fee. Notwithstanding the aforesaid license of Maker to collect rents under the Leases prior to an Event of Default, during the continuance of an Event of Default (including, but not limited to, after the maturity of the Note or any acceleration of the maturity of the Note), Noteholder may collect or receive all payments, premiums and considerations paid by any Lessee, whether or not pursuant to the terms of any Lease, for the right to terminate, cancel or modify a Lease, with an option to apply any money so received by Noteholder to reduction of the principal or interest or any other indebtedness evidencing, securing or relating to the Loan Documents in any order or manner Noteholder elects without payment by Maker of any prepayment fee. Further, during the continuance of an Event of Default (including, but not limited to, after the maturity of the Note or any acceleration of the maturity of the Note), Maker covenants and agrees to immediately pay over to Noteholder any and all sums received by Maker as creditor in respect to an assignment for the benefit of creditors in bankruptcy, reorganization, arrangement, insolvency, dissolution or receivership proceedings, or as payment, premium or other consideration, whether due to such matters or otherwise, in connection with the cancellation or modification of any Lease, whereupon Noteholder shall have the option to apply any funds so received to reduction of the principal or interest or any other indebtedness evidencing, securing or relating to the Loan Documents in any order or manner Noteholder elects without payment by Maker of any prepayment fee.

This Assignment shall remain in effect as long as any part of the indebtedness evidencing, securing or relating to the Loan Documents remains unpaid, and upon payment in full of said indebtedness, Noteholder shall execute a release of this Assignment upon request of Maker and at the expense of Maker.

Notwithstanding any law to the contrary, if there is an existing Event of Default, and if there is any law requiring Noteholder to take actual possession of the Mortgaged Property (or some action equivalent thereto, such as securing the appointment of a receiver) in order for Noteholder to "perfect" or "activate" its rights and remedies as set forth herein, then to the maximum extent permitted by law Maker waives the benefits of such law and agrees that such law shall be satisfied solely by: (1) Noteholder sending Maker written notice that Noteholder intends to enforce, and is enforcing, its rights in and to the Mortgaged Property and the rents, revenues, profits, and other items assigned herein, and (2) Noteholder sending written notice to any or all tenants on the Mortgaged Property that said tenants should commence making payments under the Leases directly to Noteholder or its designee.

The limitations on recourse contained in Article XII of the Mortgage are incorporated herein by this reference.

In any suit, action or appeal therefrom to enforce or interpret this Assignment, the prevailing party shall be entitled to recover its reasonable costs incurred therein, including, without limitation, reasonable attorneys' fees and disbursements.

UNOFFICIAL COPY

This Assignment shall be interpreted, construed and enforced in accordance with the internal laws of the State of Illinois, without regard to Illinois law with respect to conflict of laws.

In case any one or more of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

This Assignment shall run with the land and shall inure to the benefit of and bind all parties hereto and their successors and assigns.

This Assignment may be executed in multiple counterparts, each of which shall be an original instrument and which, taken together, constitute one and the same agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY RESERVED]

UNOFFICIAL COPY

EXECUTED effective as of the date first set forth above.

MAKER:

1125 VB PROPCO, LLC,
an Illinois limited liability company

By: 1125 Van Buren Joint Venture, LLC,
a Delaware limited liability company
Its: Sole Member

By: 1125 VB1 Manager, LLC,
a Delaware limited liability company
Its: Manager

By: _____
Name: Stéphane D. Rambaud
Its: Manager

Property of Cook County Clerk's Office

STATE OF ILLINOIS)
)
) ss
COUNTY OF COOK)

I, Nicole M. Dosamantes a Notary Public in and for said County, in the State aforesaid, do hereby certify that Stéphane D. Rambaud, the Manager of 1125 VB1 Manager, LLC, a Delaware limited liability company, the Manager of 1125 Van Buren Joint Venture, LLC, a Delaware limited liability company, the Sole Member of 1125 VB PROPCO, LLC, an Illinois limited liability company ("**Company**") who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 20th day of April, 2022.



NOTARY PUBLIC

(SEAL)

UNOFFICIAL COPY

EXHIBIT A

MORTGAGED PROPERTY

LOTS 5, 6, 7, 8, 9 AND LOT 10 (EXCEPT THE WEST 4 FEET OF SAID LOT 10), BOTH INCLUSIVE, EXCEPT THAT PART THEREOF TAKEN FOR CONGRESS STREET EXPRESSWAY, IN C. J. HULL'S SUBDIVISION OF BLOCK 27 IN CANAL TRUSTEES SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: 1125 W. Van Buren Street, Chicago, Illinois 60607

Permanent Tax Index Numbers:

17-17-229-013-0000
17-17-229-014-0000
17-17-229-015-0000
17-17-229-016-0000
17-17-229-050-0000

Exhibit "A" to Absolute Assignment of Leases and Rents

455770
10500-993